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January 28, 2016

The Honorable Felicia Marcus, Chair and Board Members
State Water Resource Control Board
c/o Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

**Subject: February 2, 2016 Board Meeting
(Conservation Extended Emergency Regulation)**

Dear Chair Marcus and Board Members:

We appreciate the opportunity to provide input to the State Water Resources Control Board ("State Board") on the Proposed Extended Emergency Water Conservation Regulation (Emergency Regulation) issued for public review on January 15, 2016. Eastern Municipal Water District is a firm supporter of water use efficiency and has a wide-ranging conservation and outreach program aimed at constantly reducing demand, not just during drought.

Since the implementation of the 2015 Emergency Regulation, EMWD has aggressively pursued potable water conservation. Our approach has been comprehensive and includes conversion to recycled water, sending strong pricing signals to our customers through our allocation-based rate structure, broad and targeted media campaigns, and offering a wide range of conservation assistance programs to our customers. As we have worked hard to reduce demand, we have also noted that the current Emergency Regulation does not take into account many of the factors that impact water use within our service area and our ability to achieve the state-mandated Conservation Standards included in the Emergency Regulation. Climate and growth are two areas in particular of which we have repeatedly requested equity adjustments. We have also requested that historic investments made in sustainable supplies be recognized and fully credited.

Although the proposed 2016 Emergency Regulation includes some provision for these equity adjustments, it does not go far enough to

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address the unfair impact our customers are experiencing. We are not alone in our opinion about the adjustments that need to be made to the Emergency Regulation. Over the last six months, EMWD has worked with a coalition of agencies around the state to develop and present through the State Board's Workgroup process technically sound equity adjustments for your consideration. Once again, we renew our requests that credits and adjustments, as presented by the workgroup, be fully recognized and included in the 2016 Emergency Regulations.

As a general comment, we appreciate the improvements that were made based on the feedback received on the draft regulatory framework that was distributed in late December 2015. The current definition of "sustainable supplies" is more inclusive, and the adjustment cap is no longer at four percent. These are positive steps towards improving equity across the state. We also appreciate that the Emergency Regulation recognizes that an adjustment is warranted for climate, growth, and sustainable supplies.

While we acknowledge the revisions to the proposed 2016 Emergency Regulation, we also believe that equity adjustments should be technically sound and reasonably account for all factors impacting water use. An agency should also be able to utilize the full value of adjustments, without arbitrary discounting the amount of an adjustment or imposing a "cap".

Placing a cap on credits and adjustments continues the inequitable treatment of communities with warmer and drier climates, economic growth, and historical investments in both pre-2013 and post-2013 sustainable supplies. Moreover, there is no technical or logical rationale why adjustments are discounted or capped. If an agency's circumstances are such that an adjustment or credit is warranted, then the full value of that adjustment or credit should be given. Otherwise, the resulting regulations are technically unsound and lack credibility.

In this regard, the following comment sections address some concerns with the specific credits and adjustments currently being proposed for the 2016 Emergency Regulation.

Climate Adjustment:

The proposed climate adjustment is oversimplified and results in an inaccurate reflection of the magnitude of the impact of climate on water use across the state. As participants in the State Board's Workgroup, EMWD along with other agencies have provided multiple examples demonstrating the need for a technically sound climate adjustment. A warm, dry climate greatly increases the need for watering even the most water efficient landscaping. The same drought tolerant landscaping irrigated with identical water efficient systems will use more water in hot inland areas than in cooler coastal areas.

Limiting the adjustment for climate does not fully or accurately recognize the influence of climate on outdoor water use. This is especially true for the summer months that were to set the Conservation Standards. In the Workgroup meetings, a technically sound method for adjusting conservation standards that was developed by highly

credible water resource professionals was presented. Examples were provided clearly demonstrating the need for the adjustment and the improvement in equity the proposed adjustment provided. The Emergency Regulation should include a climate adjustment that fully accounts for the impact of climate as presented to State Board in the Workgroup.

The Emergency Regulation should also avoid using an “average” of statewide ET (which includes unpopulated desert areas that have little population or applied water) for setting urban water conservation standards. We recommend that the population-weighted statewide average ET be used as baseline to compare against an agency’s ET. We also recommend agencies with a range of climates across their service area be allowed to use population weighting to calculate the agency’s ET. This will more equitably reflect the climate deviation across the populated the urbanized areas of the state where the conservation regulations are actually being applied. This methodology was reflected in one of the Workgroup recommendations presented to State Board.

While we are pleased the State Board is finally acknowledging climate variation in the proposed 2016 Emergency Regulations, using a methodology which only partially recognizes the impact of climate results in a regulation that is still technically flawed.

Growth Adjustment:

The proposed method of calculating a growth adjustment is unnecessarily complex and does not properly recognize or adjust for the impacts of growth on an agency’s ability to meet its Conservation Standard. The demand estimate for residential new development relies on information that is not readily available and standards that were not in place when the development being credited actually occurred. It also does not include enough information to accurately calculate population. To improve the accuracy of the adjustment, a simpler method of estimating residential demand using an average water use per connection method as proposed for commercial, industrial, and institutional customers should be used.

In addition to improving the accuracy of the proposed method for estimating demand, as noted above, the actual numeric application of the growth adjustment also needs to be modified to fully and accurately account for the impact such growth-related demand has on agencies trying to meet Conservation Standards.

Specifically, the calculation methodology contained in the proposed 2016 Emergency Regulation multiplies the amount of calculated new demand from growth by an agency’s original Conservation Standard to derive the adjustment to the new Conservation Standard. This simply does not make sense and appears to be an arbitrary mathematical manipulation to discount the actual impact of growth.

In EMWD’s case, the adjustment resulting from the actual increased water demands of a new residential or commercial connection is multiplied by 28%, such that for each acre-foot of new demand, a credit of approximately one-quarter of an acre-foot is given. The fact of the matter is the District does not have one-quarter persons or one-quarter businesses moving into its service area. This arbitrary discounting undermines the

credibility of the adjustment and perpetuates the apparent bias in the Emergency Regulations against economically recovering and growing areas with increasing demands.

We recommend using a methodology that accurately reflects and fully adjusts for the impact of growth. This would include applying the growth adjustment by subtracting the percent of new demand from the conservation requirement. This will fairly account for growth and prevent the penalization of areas with growing economic development. This is very similar to one of the Workgroup recommendations previously presented to State Board and is a technically credible approach to adjusting for growth.

Drought Resilient Sources of Supply Credit:

We appreciate that the definition of supplies has been expanded to be more inclusive, but believe the eligibility window (i.e. only counting supplies developed since 2013) and the cap should be eliminated. Recognition should be given to communities that have invested in ‘drought-proof’ supplies that have actually served to mitigate the severity of the current drought in many areas; the benefit of ratepayer investments should not be limited during a drought. The Emergency Regulation should encourage investment in sustainable supplies that benefit the state. We are deeply concerned by the precedent the State Board is setting for future state action during drought, and the effect it will have on locally-elected policy makers as they consider expending ratepayer dollars on drought resilient water supply projects in the future.

Eligibility Window

The proposed supply credit only applies to drought resilient supplies developed since 2013. This does not recognize the long-term approach to planning agencies have taken since previous droughts, like the one experienced in the early 1990’s. New supply sources often require many years, even a decade or more, to develop. Applying a two-year eligibility window penalizes those agencies who were pioneers in developing sustainable water supplies, implementing forward-thinking conservation programs, and planning for this drought far in advance. Undoubtedly, the severity of the current drought on urban areas has been mitigated to a great degree by these early, pre-2013 investments. Yet the very agencies that invested early in sustainable supplies and water use efficiency are being penalized in the Emergency Regulations by not being credited for those investments. This is poor policy and contrary to the long-term interests of the state.

We recommend removing the eligibility window and recognizing all resilient water supplies currently in use. This captures the historical investments agencies have already made and recognizes, as noted above, that those investments, which were in place before 2013, have actually served to mitigate the severity of the current drought in many areas.

Cap on Credits and Adjustments:

Arbitrarily limiting the credits and adjustments granted to an agency to a cumulative eight percent cap penalizes those agencies that have made very large investments in sustainable supplies and does not fully recognize agencies' local conditions attributable to climate and growth. Equity adjustments recognize that climate and growth impact water use. For some agencies that impact is very significant. The Emergency Regulation should not limit reasonable adjustments that have been developed using sound technical methods.

Any adjustments for sustainable supplies should be applied only after the conservation requirements have been adequately adjusted for fairness and equity. Limiting a sustainable supply adjustment because of an equity credit that has been applied continues to unfairly impact agencies that have experienced tremendous growth, and are located in an extremely warm climate.

Imposition of an arbitrary cap neither fully nor accurately reflects the benefit of sustainable supply investments and the impacts of factors such as climate or growth. Imposition of such a cap, combined with the indiscriminate discounting of the climate and growth adjustments and the omission of credit for sustainable supplies developed before 2013, unfortunately results in a proposed 2016 Emergency Regulation that is technically imprecise and still inequitable.

Reevaluating the Emergency Regulation:

If water year 2016 continues with positive hydrologic conditions, the need for continuing the Emergency Regulation will most certainly diminish. We request State Board members take into account any changed supply conditions due to winter storms when considering an extension of Emergency Regulation in February. State Board members will not know the resulting 2016 water year supply conditions prior to taking action to potentially extend the Emergency Regulation. However, it will be important to include in the Emergency Regulation action an unequivocal commitment to specific dates or trigger points where the State Board will reconsider supply conditions and make adjustments to, or terminate, the Emergency Regulations, as appropriate.

Long-Term Water Use Efficiency and Drought Response Policy:

The Emergency Regulation was developed quickly when faced with multiple years of drought and uncertain conditions. The proposed adjustments will incorporate some degree of equity into the Emergency Regulation, but these changes clearly do not fully address all of the factors that impact efficient water use across the state. As we look into the future, a more thoughtful and sophisticated drought response emergency regulation framework needs to be developed. Multiple factors should be fully considered and appropriately acknowledged, including investments in sustainable and emergency supplies, long-term water use efficiency efforts, and recycled water use. We look forward to working with the State Board, the Department of Water Resources, and other stakeholders to develop a new framework for encouraging efficient water use and

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the development of sustainable supplies to meet the challenges of supply shortages in the future.

Thank you for your consideration of our comments on the proposed 2016 Emergency Regulation. We look forward to working with you to develop and implement an equitable and appropriate Emergency Regulation moving forward.

Sincerely,



Paul D. Jones II, P.E.
General Manager



Elizabeth Lovsted
Sr. Civil Engineer

c: EMWD Board of Directors